**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Rural Call Completion | ) | WC Docket No. 13-39 |

## REPLY COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association (NCTA) shares the concerns identified by numerous parties that the reporting obligations proposed by the Commission in the *Notice of Proposed Rulemaking* would not be an effective means of addressing concerns about rural call completion.[1] Rather than establishing a complex new reporting scheme, the Commission should instead continue to rely on industry collaboration and, when necessary, investigation and enforcement actions targeted at those entities that are causing the problems.

## INTRODUCTION

As described in the *Notice of Proposed Rulemaking*, there is anecdotal evidence that some calls to customers of rural local exchange carriers (LECs) are not being completed as they should.[2] The Commission primarily attributes this problem to a failure on the part of "intermediate providers offering wholesale call delivery services," but it also suggests that "retail long-distance providers may not be adequately examining the resultant call completion performance."[3] To begin the process of addressing this problem, the Commission proposes to

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1 *Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, FCC 13-18 (rel. Feb. 7, 2013) (*Notice of Proposed Rulemaking*).

2 *Id*. at ¶¶ 4-6.

3 *Id*. at ¶ 1.

require all "facilities-based originating long-distance providers" to report on a monthly basis their call completion ratios for all rural LECs individually and for overall non-rural calling.[4]

In response to the *Notice of Proposed Rulemaking*, numerous parties raised concerns about the Commission's proposed new reporting obligations. Specifically, parties explain that the rules are not necessary,[5] not targeted to the entities causing the problem,[6] not designed to accurately identify problems,[7] and unnecessarily burdensome.[8] As explained in these reply comments, NCTA shares many of these concerns. Rather than establishing a complex new reporting scheme as proposed in the *Notice of Proposed Rulemaking*, the Commission could more effectively address rural call completion concerns by continuing to encourage industry

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4 *Id*. at ¶ 20.

5 *See, e.g.,* Comments of Time Warner Cable at 6 ("As access charges are reduced over time, efforts to avoid high access charges by blocking calls should decline correspondingly."); Comments of USTelecom at 5 ("Required submissions of data should be related to enforcement actions and not cast an unnecessarily broad net across all providers or mandate a continuing reporting obligation that is not related to enforcement."); Comments of Sprint at 16 ("It is not at all clear that the proposed data retention and reporting requirements can be adopted and implemented within a timeframe that would allow those proposed rules to play a meaningful role in preventing jurisdictional arbitrage.").

6 *See, e.g.,* Comments of Time Warner Cable at 2 ("Most importantly, there is no evidence that interconnected VoIP providers or other originating providers are responsible for any problems with the delivery of calls to rural customers. Rather, intermediate providers and long-distance carriers are the widely acknowledged cause of those issues."); Comments of the American Cable Association at 3-4 ("Because the Commission can fully address call completion problems by focusing any new regulations on the initial facilities-based LD provider, it need not and should not impose, as it proposes in the NPRM, new monitoring, record retention, and reporting requirements on local exchange (voice) providers that are not facilities-based LD providers."); Comments of Comcast at 12 ("In order to develop a comprehensive record, therefore, the Commission should require terminating service providers in rural areas to file quarterly reports that document the number of long distance calls delivered to the reporting provider on a monthly basis and the number of calls completed to the called locations on their networks.").

7 *See, e.g.,* Comments of Comcast at 7-10; Comments of Time Warner Cable at 9-10; Comments of USTelecom at 4.

8 *See, e.g.,* Comments of Sprint at 17 ("Sprint handles approximately 1.9 billion interexchange calls each month, including hundreds of millions of calls routed to an intermediate carrier. . . . However, our platforms are not designed to generate the type of reports envisioned in the NPRM."); Comments of Verizon at 9 ("The volume of call records at issue here is massive. Verizon had over six billion call records in one sample month (August 2012). As such, new retention obligations that could last up to seven months (i.e., the six most recent complete calendar months) would impose a considerable burden on providers.").

collaboration and, when necessary, through investigation and enforcement activities targeted at those entities that are causing the problems.

## I. THE PROPOSED REPORTING OBLIGATIONS WILL NOT BE EFFECTIVE IN ADDRESSING CONCERNS REGARDING RURAL CALL COMPLETION

NCTA shares the views expressed by many parties that the proposed reporting obligations will not be effective in achieving their goal of identifying (and ultimately eliminating) rural call completion concerns. While the Commission's goal of gathering a baseline set of data to facilitate identification and resolution of problems is well-intentioned, for a variety of reasons explained below it is unlikely to produce the intended results.

First, as the Commission's intercarrier compensation reforms continue to be implemented, there is a declining incentive for long-distance providers to avoid sending traffic to rural LECs. As USTelecom explains, "[i]t cannot be disputed that if the majority of rural call completion problems are due to access arbitrage, the problem should be vastly reduced as the *USF/ICC Transformation Order* is implemented and terminating per-minute switched access and reciprocal compensation rates are phased down."[9] While the ongoing intercarrier compensation reforms do not eliminate the near-term problems that some rural customers are experiencing, the shrinking incentive for long-distance providers to engage in this behavior is a factor that should be considered by the Commission in assessing whether a completely new reporting regime (requiring approval of the Office of Management and Budget) would be an effective regulatory approach.

[9] Comments of USTelecom at 4-5; *see also* Comments of Frontier at 3 ("As a threshold matter, Frontier believes that the Commission should avoid adopting any new regulations until the Commission analyzes the effect that harmonizing interstate and intrastate terminating access rates has had on rural call completion issues."); Comments of Sprint at 17 ("The most effective means of minimizing jurisdictional arbitrage is the on-going implementation of the Commission's intercarrier compensation reforms, not adoption of detailed call completion retention and reporting rules.").

Second, the proposal targets a limited set of companies (facilities-based originating long-distance providers) and ignores a variety of other parties (intermediate long-distance providers, transit providers, terminating rural LECs) that often bear greater responsibility for the failure of a call to complete. As noted by Time Warner Cable and the American Cable Association (ACA), the *Notice of Proposed Rulemaking* identifies intermediate long-distance providers, rather than originating carriers, as the potential cause of most rural call completion problems.[10] Yet the Commission's proposed rules would not cover these entities. Similarly, as explained by Comcast and others, in many cases a call attempt may be unsuccessful due to factors on the terminating end of the call that are within the control of the transit provider or the terminating LEC.[11] A reporting obligation focused solely on originating providers will not identify or solve these problems.

Third, the statistics the Commission proposes to collect will not accurately identify whether a problem exists, nor will they identify the cause of that problem. As explained by numerous parties, including Comcast and Time Warner Cable, the Commission's proposal is overinclusive with respect to the types of events that are treated as unsuccessful call attempts.[12] For example, if a called party is at home but chooses not to pick up the phone, that would not be treated as a successful call attempt under the Commission's proposal.[13] Given the small sample size under the Commission's proposal to require reports for any LEC that is sent 100 or more calls, only a small number of unanswered calls would be sufficient to affect an originating

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[10] Comments of Time Warner Cable at 3-5; Comments of ACA at 3-4.

[11] Comments of Comcast at 11-13; Comments of Sprint at 11-12.

[12] Comments of Comcast at 7-10; Comments of Time Warner Cable at 9-10.

[13] *Notice of Proposed Rulemaking* at ¶ 29.

provider's performance.[14] There are a variety of other scenarios that also would be treated as unsuccessful call attempts even where the originating carrier has successfully performed its segment of the call.[15] The end result is that a report showing a disparity between the call completion ratio for a particular rural LEC and the ratio for overall non-rural traffic would not necessarily provide a meaningful indication that there was a problem attributable to the originating carrier.

## II. ENCOURAGING GREATER INDUSTRY COLLABORATION, WITH INVESTIGATION AND ENFORCEMENT AS NECESSARY, WILL BE MORE EFFECTIVE THAN IMPOSING REPORTING OBLIGATIONS

Given the concerns that have been identified in the record, the Commission should refrain from imposing the new reporting obligations proposed in the *Notice of Proposed Rulemaking*. Instead, the Commission should continue to encourage industry participants to work together in resolving problems. The record demonstrates that many companies have devoted significant resources to both bilateral and industry-wide efforts to combat call completion problems and the continuation of those efforts should be encouraged.[16]

The Commission also should consider additional steps that make such collaborative efforts even more productive. For example, as proposed by Comcast, the Commission should require rural LECs to set up test lines.[17] Unlike the backward-looking reporting obligations

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[14] Comments of Frontier at 5-6; Comments of Sprint at 20-21.

[15] Comments of Comcast at 7-9.

[16] Comments of Comcast at 4 ("Comcast collects and actively monitors performance metrics for every intermediate interexchange provider with whom it contracts and regularly meets with each carrier to review their results, both in total and for rural routes in particular."); Comments of Time Warner Cable at 1 ("TWC is eager to work with rural carriers and other relevant entities to address any problems with the delivery of calls to rural communities."); Comments of Sprint at 10 ("Sprint has a robust monitoring system in place to track and evaluate intermediate carriers' performance – indeed, Sprint recently invested $1.5 million in a new platform to enhance its monitoring capabilities – and monitors the service performance of each of its intermediate carriers on a daily basis.").

[17] Comments of Comcast at 13-14.

proposed by the Commission in the *Notice of Proposed Rulemaking*, the ability to send calls to test lines has proven to be a very effective tool in identifying and resolving problems in real time.[18] The Commission also should require that rural LECs contact the originating provider before filing a complaint with the Commission alleging that the originating provider has acted improperly in handling a call.

When these collaborative methods prove not to be sufficient to address the concerns of a particular carrier, the Commission should use its investigation and enforcement abilities to help resolve a particular situation. As illustrated by the Commission's recent consent decree with Level 3,[19] investigation and enforcement can be an important tool in identifying and rectifying recurring call completion problems (and sending a message to others that are engaging in similar conduct). Reporting obligations of the type proposed in the *Notice of Proposed Rulemaking* make more sense as a monitoring tool after bad conduct has been identified and punished (as the Commission did in the Level 3 case)[20] than they do as a tool for prophylactic identification of call completion problems.

## III. IF THE COMMISSION IMPOSES REPORTING OBLIGATIONS, THE PROPOSAL IN THE NOTICE OF PROPOSED RULEMAKING SHOULD BE REVISED SIGNIFICANTLY

If the Commission decides to move forward with establishing a reporting scheme, notwithstanding all the concerns identified in the record, it should make a number of changes to the proposal in the *Notice of Proposed Rulemaking*. First, the Commission should acknowledge that many reporting carriers will have to make significant operational changes to record and

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18 *Id*. at 13.

19 Press Release, *Level 3 Agrees to Adopt Rigorous New Call Completion Standards and Provide Rural Call Completion Data, Resolving FCC Investigation* (rel. Mar. 12, 2013).

20 *Id*.

report the required calling data. A minimum of six months to implement these changes should be allowed from the time the final data collection is approved by the Office of Management and Budget. Carriers should be given 45 days after the end of each quarter to report the monthly data required.

Second, as Comcast and Time Warner Cable proposed, the Commission should make the requirements less burdensome by using the Network Effectiveness Ratio (NER) to measure the extent to which carriers are completing calls.[21] As Comcast explains, the NER "may prove simpler to implement for both service providers and the Commission, as there would be no need to define, track, and exclude certain categories of call attempts before calculating a call answer rate."[22] Alternatively, if the Commission does not use the NER, should exclude certain types of calls that tend to skew call completion data (i.e. calls handed back to the upstream provider, auto-dialer traffic and calls to toll free numbers).[23]

Third, the Commission could adopt a minimum acceptable call completion threshold and limit reporting to only those OCNs for which the minimum threshold has not been achieved.[24] For companies whose performance exceeds this threshold, such an approach would essentially operate as a safe harbor. These companies could simply certify that their performance meets the Commission's threshold, while reporting would be limited to those companies that do not meet the threshold. Such an approach not only would be less burdensome for carriers, it also would be less burdensome for the Commission, which only would receive information on areas and carriers where there appear to be problems. To further reduce the burden on carriers and the

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21 Comments of Comcast at 9; Comments of Time Warner Cable at 9-10.

22 Comments of Comcast at 9.

23 Comments of Comcast at 7-8.

24 Comments of Associated Network Partners, Inc. and Zone Telecom, Inc. at 7.

Commission, the Commission also should raise the minimum number of calls that potentially trigger the reporting obligation. As described above, the proposed threshold of 100 calls to an OCN creates the potential for the behavior of a small number of customers to have a significant and disproportionate influence on the results.

Fourth, as proposed by Comcast, obligations must be placed on terminating rural carriers as well as originating carriers.[25] Call failures can occur at any point in the call path between the calling party and the called party. Developing a more comprehensive record of the performance of all companies involved in the transmission of a call, rather than the incomplete approach proposed in the *Notice of Proposed Rulemaking*, will better enable the Commission to determine where the fault lies in any particular situation.

Finally, as numerous parties have advocated, any data submitted to the Commission pursuant to these new reporting obligations should be treated as confidential.[26] The data the Commission proposes to collect from providers is not generally made available to the public, and it certainly is not made available to competitors. Accordingly, the Commission should establish a presumption of confidentiality for this data, as it has in a variety of other contexts.[27]

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[25] *Id*. at 11-13.

[26] *Id*. at 5.

[27] *Id.* at 5 n.8.

## CONCLUSION

For all the reasons explained in these reply comments, the Commission should refrain from adopting the reporting obligations proposed in the *Notice of Proposed Rulemaking*. Instead, it should continue to rely on industry collaboration and, when necessary, investigation and enforcement actions targeted at those entities that are causing the problems.

Respectfully submitted,

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